IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

S.B. CRIMINAL APPEAL NO.307/1988
(State of Raj.Vs.Gopilal & Anr.)
Against the judgment dated 17.12.1987 passed by Additional Munsif and Judicial Magistrate, Pali in Criminal Case No.148/86 (147/82).

Date of Judgment : 18th February, 2005

P R E S E N T

HON'BLE MR. JUSTICE SATYA PRAKASH PATHAK

Mr. O.P. Boob, Public Prosecutor for the State.
Mr. N.R. Choudhary for accused respondents.

BY THE COURT :

This appeal has been filed by the State against the judgment and order dated 17.12.1987 passed by learned Munsif and Judicial Magistrate, Pali in Criminal Case No.148/86 (147/82), whereby the accused respondents have been given benefit of doubt and they have been acquitted of the charges under Section 4/9 of the Opium Act.

In this matter, the leave to appeal was granted on 29.07.1988.

Learned Public Prosecutor has argued that the

the recovery has been proved in this case, therefore, merely for the reason that evidence was not led in relation to keeping the sealed articles safely and it remained sealed and seal was not tampered with up till the sealed articles were sent to the Forensic Science Laboratory cannot be a ground to disbelieve the evidence of prosecution. He further submitted that it is a general presumption that when the recovery is proved,then, there appears to be no reason why sealed articles in the same manner will not be dispatched for chemical examination.

On the other hand, it has been contended by learned counsel appearing on behalf of the accused respondents that in view of the decision reported in Cr.L.R. (SC) 1980 page 85, State of Rajasthan Vs. Daulat Ram, wherein it has been observed that it is the duty of the prosecution to prove that after recovery of the contraband article, the same remained intact till the same were sent for examination in the Forensic Science Laboratory.

I have considered the rival submission made before me.

I am in the agreement with the argument raised by the learned counsel for the accused respondents that

it is always the duty of the prosecution to prove its case in the matters arising out of Opium/Drug Act etc. without leaving a doubt that the articles which were recovered from the accused were properly sealed and samples were kept intact till the same were dispatched to the Forensic Science Laboratory. The prosecution is always required to prove this fact as also the articles so recovered are examined in the Forensic Science Laboratory. Thus, the prosecution is required to prove the entire chain of facts connecting the accused with the offence committed by him. If chain is not complete, then in view of the decision of the Hon'ble Supreme Court referred above, conviction is not liable to be sustained. The learned trial court committed no error while extending the benefit of doubt to the accused in the present case.

In view of the forgoing discussion, the appeal filed by the State deserves to be dismissed after confirming the judgment delivered by the learned trial court in Criminal Case NO.148/86(147/82).

Accordingly, the appeal filed by the State stands dismissed.

(Satya Prakash Pathak), J.

vs